



House of Representatives

General Assembly

File No. 267

February Session, 2002

Substitute House Bill No. 5718

House of Representatives, April 2, 2002

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT CONCERNING THIRD-PARTY LIABILITY FOR
CONTAMINATED PROPERTY AND MINOR REVISIONS TO
ENVIRONMENTAL STATUTES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-4 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) The commissioner may, subject to the provisions of chapter 67,
4 employ such agents, assistants and employees as he deems necessary
5 to carry out his duties and responsibilities. He may retain and employ
6 other consultants and assistants on a contract or other basis for
7 rendering legal, financial, technical or other assistance and advice.

8 (b) The commissioner may allow an applicant for a permit or other
9 license pursuant to title 22a to hire an independent consultant, at the
10 expense of the applicant, to review the application and recommend
11 that the commissioner accept or reject the application.

12 Sec. 2. Subsections (a) and (b) of section 22a-133m of the general
13 statutes are repealed and the following is substituted in lieu thereof
14 (*Effective October 1, 2002*):

15 (a) An urban sites remedial action program is established to
16 identify, evaluate, plan for and undertake the remediation of polluted
17 real property. [which is deemed vital to the economic development
18 needs of the state.]

19 (b) The Commissioner of Economic and Community Development,
20 in consultation with the Commissioner of Environmental Protection,
21 shall establish the priority of sites for evaluation and remediation
22 based upon the following factors: (1) The estimated cost of evaluating
23 and remediating the site, if known; (2) the anticipated complexity of an
24 evaluation of the site; (3) the estimated schedule for completing an
25 evaluation; (4) the potential economic development benefits of the site
26 to the state of Connecticut; [and] (5) whether the site would not
27 otherwise be remediated without the assistance of this program; and
28 (6) any other factors which the commissioners deem relevant. No real
29 property shall be eligible for evaluation or remediation under this
30 section unless: (A) The Commissioner of Economic and Community
31 Development finds that the state owns the site or otherwise has or
32 obtains the power to approve the type of development which first
33 occurs on the site after remediation; and (B) the Commissioner of
34 Environmental Protection is unable to determine the responsible party
35 for the pollution or the cleanup of the site, or the responsible party is
36 not in timely compliance with orders issued by the commissioner to
37 provide remedial action, or the commissioner has not issued a final
38 decision on an order to a responsible party to provide remedial action
39 because of (i) a request for a hearing on an order, or (ii) an order issued
40 is subject to an appeal pending before a court. Except for any site
41 proposed for acquisition under subsection (e) of this section, no real
42 property shall be eligible for evaluation or remediation under this
43 section unless the site is located in a distressed municipality, as
44 defined in section 32-9p, as amended, or a targeted investment
45 community, as defined in section 32-222, as amended. For purposes of

46 this section, "responsible party" means any person, as defined in
47 section 22a-2, who created a source of pollution on the site or an owner
48 of the site during the investigation or remediation funded pursuant to
49 this section.

50 Sec. 3. Subdivision (3) of section 22a-134 of the general statutes, as
51 amended by section 15 of public act 01-204 and section 73 of public act
52 01-9 of the June special session, is repealed and the following is
53 substituted in lieu thereof (*Effective October 1, 2002*):

54 (3) "Establishment" means any real property at which or any
55 business operation from which (A) on or after November 19, 1980,
56 there was generated, except as the result of remediation of polluted
57 soil, groundwater or sediment, more than one hundred kilograms of
58 hazardous waste in any one month, (B) hazardous waste generated at a
59 different location was recycled, reclaimed, reused, stored, handled,
60 treated, transported or disposed of, (C) the process of dry cleaning was
61 conducted on or after May 1, 1967, (D) furniture stripping was
62 conducted on or after May 1, 1967, or (E) a vehicle body repair facility
63 was located on or after May 1, 1967, but does not mean a small or large
64 quantity generator, as defined in regulations adopted by the
65 commissioner under section 22a-449, that generate more than one
66 hundred kilograms of universal waste, as determined by regulations
67 adopted by the commissioner under section 22a-209i, in any one
68 month.

69 Sec. 4. Section 22a-196 of the general statutes is repealed and the
70 following is substituted in lieu thereof (*Effective October 1, 2002*):

71 No asphalt batching or continuous mix facility shall be located in an
72 area which is less than one-third of a mile in linear distance from any
73 hospital, nursing home, school, area of critical environmental concern,
74 watercourse, or area occupied by residential housing. Such distance
75 shall be measured from the outermost perimeter of such facility to the
76 outermost point of such zones. [provided that any such facility in
77 operation] Nothing in this section shall limit the authority of the
78 Commissioner of Environmental Protection to issue a permit to any

79 facility constructed or in operation as of December 31, 1997; [, shall not
80 be subject to the provisions of this section.]

81 Sec. 5. Section 22a-449k of the general statutes is repealed and the
82 following is substituted in lieu thereof (*Effective October 1, 2002*):

83 No person shall remove or replace or subcontract for the removal or
84 replacement of a residential underground heating oil storage tank
85 system if the person finds such removal or replacement will involve
86 remediation of contaminated soil or groundwater [, the costs of which
87 are to be paid out of the residential underground heating oil storage
88 tank system clean-up subaccount established pursuant to subsection
89 (b) of section 22a-449c,] unless the person is a registered contractor. To
90 become a registered contractor, a person shall provide to the
91 Commissioner of Environmental Protection, on forms prescribed by
92 said commissioner, (1) evidence of financial assurance in [the form of
93 insurance, a surety bond or liquid company assets in an amount not
94 less than two hundred fifty thousand dollars] accordance with the
95 standards established pursuant to subsection (c) of section 22a-449d, as
96 amended, and (2) a written statement certifying that such person has
97 had [any] training [required by law] for such business in accordance
98 with the standards established pursuant to subsection (c) of section
99 22a-449d, as amended, and that such person has (A) performed no
100 fewer than three residential underground petroleum storage tank
101 system removals, or (B) has contracted for at least three removals of
102 residential underground petroleum storage tank systems. Such person
103 shall pay a registration fee of five hundred dollars to the
104 commissioner. Each contractor holding a valid registration on July first
105 shall, not later than August first of that year, pay a renewal fee to the
106 commissioner of two hundred fifty dollars in order to maintain such
107 registration. Any money collected for registration pursuant to this
108 section shall be deposited in the Environmental Quality Fund. The
109 commissioner may revoke a registration for cause [and, on and after
110 the date the review board establishes requirements for financial
111 assurance, training and] which shall include, but not be limited to,
112 failure to meet the performance standards under subsection (c) of

113 section 22a-449d, as amended. [, may reject any application for
114 registration that does not meet such requirements.]

115 Sec. 6. Subsection (e) of section 25-43c of the general statutes is
116 repealed and the following is substituted in lieu thereof (*Effective*
117 *October 1, 2002*):

118 (e) No water company complying with the provisions of this section
119 that permits any recreational activity on any lands or waters which
120 such company owns, controls or has the right to use in carrying out its
121 operations shall be liable in damages except with respect to wilful or
122 wanton conduct for injury or property damage to any person who
123 enters upon [its] such lands or waters. [under the provisions of this
124 section.]

125 Sec. 7. (NEW) (*Effective October 1, 2002*) (a) No owner of real
126 property shall be liable for any costs or damages pursuant to any
127 provision of the general statutes or common law to any person other
128 than this state, any other state or the federal government, with respect
129 to any pollution or source of pollution on or emanating from such
130 owner's real property that occurred or existed prior to such owner
131 taking title to such property, provided:

132 (1) The owner did not establish or create a condition or facility at or
133 on such property that reasonably can be expected to create a source of
134 pollution to the waters of the state for purposes of section 22a-432 of
135 the general statutes and such owner is not responsible pursuant to any
136 other provision of the general statutes for creating any pollution or
137 source of pollution on such property;

138 (2) The owner is not affiliated with any person responsible for such
139 pollution or source of pollution through any direct or indirect familial
140 relationship, or any contractual, corporate or financial relationship
141 other than that by which such owner's interest in the property was
142 conveyed or financed; and

143 (3) The Commissioner of Environmental Protection has approved in

144 writing: (A) An investigation of the pollution and sources of pollution
145 on or emanating from the real property which pollution or sources of
146 pollution occurred prior to such owner's taking title to such property,
147 conducted in accordance with the prevailing standards and guidelines
148 which investigation was conducted by an environmental professional
149 licensed in accordance with section 22a-133v of the general statutes;
150 and (B) a final remedial action report prepared by a licensed
151 environmental professional that demonstrates that remediation of such
152 pollution and sources of pollution was completed in accordance with
153 the remediation standards in regulations adopted pursuant to section
154 22a-133k of the general statutes.

155 (b) This section shall not relieve any such liability where (1) an
156 owner failed to file or comply with the provisions of an environmental
157 land use restriction created pursuant to section 22a-133o of the general
158 statutes for such real property or with the conditions of a variance for
159 the real property that was approved by the commissioner in
160 accordance with regulations adopted pursuant to section 22a-133k of
161 the general statutes, or (2) the commissioner, at any time, determines
162 that an owner provided information that it knew or had reason to
163 know was false or misleading or otherwise failed to satisfy all of the
164 requirements of subsection (a) of this section. Nothing in this section
165 shall be construed to relieve an owner of any liability for pollution or
166 sources of pollution on or emanating from such property that occurred
167 or were created after the owner took title to such property.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
EQ/GF - Cost/Revenue	Department of Environmental Protection	Minimal	Minimal
GO Bond Funds		See Below	See Below

Municipal Impact: None

Explanation

Allowing an applicant for a permit or other license to hire an independent consultant at the applicant's expense, to review the application and recommend to the Commissioner of the Department of Environmental Protection (DEP) acceptance or rejection of the application, will minimally increase the DEP's workload within resources, for review of the recommendation.

Potentially expanding the eligible projects under the Urban Sites Remedial Action Program could increase the use of the funding or divert funding from one project to another. The unallocated GO bond fund balance for the Urban Sites account, after the March bond commission meeting is \$10,619,610.

Exempting businesses that generate more than 100 kilograms of universal waste in any one month from the transfer act could decrease permitting costs and offsetting revenues from fees associated with permits to the DEP.

Authorizing the DEP Commissioner to issue permits to asphalt batching plants, either built or operating as of December 31, 1997 instead of just those in operation on that date, would effect a minimum

of 2 permits. The increased workload due to the issuance of a permit would be offset through the fees attributable to the permit.

Providing that only registered contractors can remove or replace underground fuel storage tanks that require remediation of contaminated soil or groundwater, regardless if these costs are paid from the residential underground heating oil storage tank account, increases the number of contractors who must register. This will increase costs to the DEP for additional registrations which will be partly offset by a \$500 registration fee and a \$250 renewal fee to the Environmental Quality Fund. The exact impact is estimated to be minimal since it is anticipated that the majority of contractors have already registered.

The bill also exempts, under certain circumstances, owners of real estate from liability to a state or the federal government for damages due to pollution on the land which took place before the land was acquired. The limiting of liability is not anticipated to apply to many circumstances and result in increased costs to the state.

OLR Bill Analysis**sHB 5718****AN ACT CONCERNING THIRD-PARTY LIABILITY FOR
CONTAMINATED PROPERTY AND MINOR REVISIONS TO
ENVIRONMENTAL STATUTES****SUMMARY:**

This bill:

1. exempts certain property owners from liability for costs or damages to anyone, other than state or federal governments, for pollution or pollution sources on or emanating from their property that occurred or existed before they owned it;
2. makes some less economically desirable polluted property eligible for assessment and remediation under the Urban Sites Remedial Action Program, and requires the officials who administer the program to consider whether a site would not otherwise be remediated when they establish the priority of sites for evaluation and remediation (see BACKGROUND);
3. exempts from Transfer Act requirements certain businesses that generate more than 100 kilograms (kg) of universal waste in any one month;
4. requires that only registered contractors may remove or replace underground fuel storage tanks that require remediation of contaminated soil or groundwater, regardless of whether their actions are subject to reimbursement under the residential Underground Storage Tank Removal program, and changes the requirements for becoming a registered contractor;
5. expands an exemption from liability for injury or property damage occurring on water company property to include property that water companies control or have the right to use;
6. authorizes the Department of Environmental Protection (DEP) commissioner to issue permits to asphalt batching plants built as of December 31, 1997, instead of just to those in operation on that date, regardless of a law restricting the location of such plants; and
7. authorizes the DEP commissioner to allow an applicant for a DEP license or permit to hire an independent consultant, at the

applicant's expense, to review the application and recommend that the commissioner either accept or reject it.

EFFECTIVE DATE: October 1, 2002

PROPERTY OWNERS' EXEMPTION FROM LIABILITY

The bill exempts a property owner from liability for costs or damages to anyone, other than states or federal governments, for pollution or pollution sources emanating from his property that occurred or existed before he acquired title under certain conditions.

To be exempt, an owner must not:

1. have created a condition or facility on the property that reasonably could be expected to pollute state waters according to state law;
2. be responsible, under state law, for creating any pollution or source of pollution on the property; or
3. be affiliated with anyone responsible for such pollution through any family relationship or any contractual, corporate, or financial relationship other than that by which the property was conveyed or financed.

In addition, the DEP commissioner must have given written approval to (1) a licensed environmental professional's properly conducted pollution investigation that occurred before the present owner took title, and (2) the licensed environmental professional's final remedial action report demonstrating that the pollution remediation was completed according to environmental regulations.

However, owners are not exempt from liability under the bill if they fail to comply with a legal restriction on the land, or with the conditions of a variance approved by the commissioner. They may also be held liable if the commissioner at any time finds that the owner knowingly provided false or misleading information or failed to comply with the bill's provisions.

The bill does not relieve any owner of liability for pollution or sources of pollution on or emanating from his property that occurred or were created after he took title.

TRANSFER ACT EXEMPTION

The bill exempts from the provisions of the Transfer Act small or large quantity generators that generate more than 100 kg (220 pounds) of universal waste in any one month. By law, businesses that produce or create more than 100 kg of hazardous waste in any one month, and certain specific businesses, such as dry cleaners and furniture strippers, and others, are subject to the Transfer Act. Universal waste includes widely distributed and commonly-used products, such as batteries, pesticides, thermostats and certain kinds of lightbulbs. Thus, the bill exempts businesses that create or produce more than 100 kg of these wastes in any one month from certifying to DEP, upon transfer of their property, that there has been no hazardous spill on the property, or from cleaning up such a spill as the act requires. It appears to apply to all businesses that have ever generated more than 100 kg of universal waste in any one month of their operation, and regardless of whether they may generate other hazardous wastes as well.

UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT

The bill requires anyone applying to become a registered contractor to provide the DEP commissioner, evidence of financial assurance and a written statement certifying he has appropriate training according to the standards established by the Underground Storage Tank Petroleum Clean-up Account Review Board. Such standards require that registered contractors have at least \$250,000 in general liability insurance and \$250,000 in pollution liability insurance, and meet training requirements set by federal and state occupational safety and health administrations. Current law requires financial assurance in the form of insurance, a surety bond, or liquid company assets of at least \$250,000.

By law, the commissioner can revoke a contractor's registration for cause. The bill expands the definition of "cause" to include failure to meet the board's performance standards. However, it also eliminates the commissioner's express authority to reject applicants for registration who fail to comply with the board's financial assurance and training standards. Presumably, an application would have to include such information to be complete.

WATER COMPANY LIABILITY

The bill exempts water companies that (1) comply with existing law

concerning recreational activities on its land and waters, such as sport fishing or from certain boats, and (2) permit recreational activity on land or water they own, control, or have the right to use to carry out their operations, from liability for injury or property damage to people using their land or waters. The current law's recreational use exemption applies only to injuries on property a water company owns. A water company is not exempt under the law or the bill if it caused injury or property damage through its willful or wanton conduct.

BACKGROUND

Transfer Act

The Transfer Act requires the transferor (or in some instances, a party associated with the transfer) of most real property, including the state, to certify the condition of that property if hazardous waste was generated or processed there. The transferor (or party associated with the transfer) certifies that (1) there has been no hazardous spill on the property; (2) any hazardous substance has been remediated; (3) there was a spill but the DEP determined that remediation was unnecessary; (4) it is investigating the environmental condition of the property and will remediate it if necessary; or (5) it will conduct post-remediation monitoring, investigate further if monitoring indicates a need, and remediate if necessary.

Universal Waste

Universal waste refers to certain widely used hazardous wastes that tend to be (1) very common, (2) significant in the waste stream, and (3) generated by a diverse variety of users but not generally recycled or properly disposed of.

Large Quantity Generator

A large quantity generator is one that generates more than 1,000 kg of hazardous waste in any calendar month, or generates more than 1 kg of acute hazardous waste.

Small Quantity Generator

A small quantity generator generates between 100 and 1,000 kg of hazardous waste in a calendar month, does not accumulate more than 1,000 kg of hazardous waste, and does not generate more than 1 kg of

acute hazardous waste.

Underground Storage Tank Petroleum Clean-up Account

This program exempts owners of residential underground storage tanks from civil liability to the state for costs related to an oil spill if the owner has the tank removed or replaced by December 31, 2001 and meets certain other requirements. The law also provides reimbursement for costs of remediating spills found during the removal or replacement of the storage tanks.

Urban Sites Remedial Action Program

This program provides for expedited remediation of polluted property that has potential economic development benefits for the state. Eligible sites must be located in either a distressed community or a target investment community. It also allows the remediation of sites which, if cleaned up and developed, will improve the urban environment.

Water Company

A water company includes any individual, partnership, association, corporation, municipality, or other entity, or a lessee of such an entity, that owns, maintains, operates, manages, controls or employs a pond, lake, reservoir, well, stream or distributing plant, or system that supplies water to two or more consumers, or to 25 or more people on a regular basis.

Related Law

CGS § 52-557g exempts land owners who make their land available to the public free for recreational use from liability for injury to people or property. The Connecticut Supreme Court has held that a municipality is not an owner within the meaning of this law.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 1

